

**Letter of Findings: 65-20200201
Indiana Overweight Proposed Assessment
For the Year 2019**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Motor Carrier provided sufficient evidence that it should not be assessed the full civil penalty for being overweight.

ISSUE

I. Motor Vehicles - Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-4-1; IC § 9-20-4-2; IC § 9-20-6-11; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the assessment of an overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is a trucking company hauling lumber through Indiana for delivery to customers in Indiana. On February 19, 2019, the Indiana State Police ("ISP") examined Taxpayer's commercial motor vehicle and issued an overweight violation. Sometime later, ISP informed the Department of the violation. As a result, the Department issued Taxpayer a proposed assessment for being overweight in the form of a "No Permit Civil Penalty." Taxpayer protested the assessment of the civil penalty. The Department held an administrative hearing, and this Letter of Findings results. Further facts will be provided as necessary.

I. Motor Vehicles - Overweight Penalty.

DISCUSSION

ISP reported that Taxpayer needed but did not obtain an overweight permit. Taxpayer was 3,740 pounds over the statutorily allowed limit for gross weight and 1,240 pounds overweight on the rear axle group.

As a threshold issue, it is a taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Taxpayers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty . . ." According to IC § 9-20-18-14.5(b), the Department may subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, the Department issued Taxpayer a "No Permit Civil Penalty." According to the ISP report, Taxpayer transported a load of lumber at a weight that was more than the amount allowed under IC § 9-20-4-1. Taxpayer states he sought help from the Department as to whether he should get a permit for his load for "untreated lumber" and if that falls under the statute. In response the Department stated in an email that:

The overweight commodity permits for raw wood is allowed up to 97,000lbs which is for raw bark, chip, sawdust, logs and wood mix that you have mentioned below in the IC code [IC §v 9-13.2-120.7]. You would have to be legal weight at 80,000lbs and following the Federal bridge table because we have no other permits to accommodate the overweight lumber just for being overweight on a single trip permit.

Taxpayer cites to this email in his protest, stating that the Department could not issue him a permit. The Department notes that, first, Taxpayer is required to have a permit for carrying loads that exceed statutory limits at the time of transport. Taxpayer would have been allowed safe travel without a permit for raw lumber with that 10% buffer if he would not have been traveling on an interstate, but he was. This allows the Department to provide Taxpayer a route safe for transport. In this case, however, Taxpayer believed that their vehicle was below the statutory weight limit and that he could not be issued a permit. Taxpayer did not have a permit on their vehicle at the time of the traffic stop, and therefore was correctly assessed a No Permit Civil Penalty. However, the Department understands Taxpayer's position, and Taxpayer would not have required a permit for travel if its vehicle were not on an interstate highway, because the load was less than 10 percent over the statutory weight limit. IC § 9-20-4-2.

In addition to providing Taxpayer an opportunity to protest, IC § 9-20-18-14.5 provides "not more than" language to the Department when generating a proposed assessment amount. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized by its statutory discretion and this Letter of Finding.

FINDING

Taxpayer's protest is sustained in part and denied in part.

February 8, 2021

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